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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 259 Session of  
2011

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INTRODUCED BY ERICKSON, TARTAGLIONE, BROWNE, KITCHEN, FONTANA,  
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AND EARLL, JANUARY 26, 2011

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REFERRED TO FINANCE, JANUARY 26, 2011

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AN ACT

1 Authorizing establishment and maintenance of disability savings  
2 accounts; providing an exclusion from State income tax; and  
3 imposing restrictions.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Disability  
8 Savings Account Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall  
11 have the meanings given to them in this section unless the  
12 context clearly indicates otherwise:

13 "Account administrator." Any of the following:

14 (1) A national or State-chartered bank or Federal or  
15 State-chartered savings and loan association, savings bank or  
16 credit union.

17 (2) A trust company authorized to act as a fiduciary.

1 (3) An insurance company authorized to do business in  
2 this Commonwealth pursuant to the act of May 17, 1921 (P.L.  
3 682, No.284), known as The Insurance Company Law of 1921.

4 (4) A broker-dealer, commodity issuer, investment  
5 advisor or agent registered pursuant to the act of December  
6 5, 1972 (P.L.1280, No.284), known as the Pennsylvania  
7 Securities Act of 1972.

8 (5) A third-party administrator with a current  
9 certificate of authority issued pursuant to the laws of this  
10 Commonwealth.

11 (6) A certified public accountant licensed to practice  
12 in this Commonwealth pursuant to the act of May 26, 1947  
13 (P.L.318, No.140), known as the CPA Law.

14 (7) An attorney licensed to practice in this  
15 Commonwealth.

16 (8) An employer that participates in a disability  
17 savings account program.

18 (9) Persons who are qualified to administer trusts  
19 authorized under the provisions of section 1917 of the Social  
20 Security Act (49 Stat. 620, 42 U.S.C. § 1396p) in this  
21 Commonwealth.

22 "Account holder." An individual who has been determined to  
23 have mental retardation, as defined in section 102 of the act of  
24 October 20, 1966 (3rd Sp.Sess., P.L.96, No.6), known as the  
25 Mental Health and Mental Retardation Act of 1966, and who  
26 establishes or on whose behalf a disability savings account is  
27 established, including an employee of an employer who  
28 contributes to a disability savings account on the employee's  
29 behalf.

30 "Disability savings account" or "account." A trust or

1 custodian account established in this Commonwealth pursuant to  
2 the authority of this act exclusively to pay the qualified  
3 disability expenses of an account holder, but only if the  
4 written governing instrument creating the account meets the  
5 following requirements:

6 (1) Except in the case of a contribution representing a  
7 transfer from an existing account, no contribution may be  
8 accepted:

9 (i) unless it is in cash; and

10 (ii) only to the extent such contribution, when  
11 added to previous contributions to the account for the  
12 calendar year, does not exceed the maximum amount  
13 permitted to be given under the provisions of section  
14 2503 of the Internal Revenue Code of 1986 (Public Law  
15 99-514, 26 U.S.C. § 2503) without creating liability for  
16 payment of gift tax by the donor or his estate.

17 (2) The trustee or custodian for the account is  
18 qualified to act as an account administrator hereunder.

19 (3) No part of the assets of the account may be invested  
20 in life insurance contracts.

21 (4) The assets of the account may not be commingled with  
22 other property.

23 (5) The account holder's interest in the account is  
24 nonforfeitable.

25 "Disability savings account program" or "program." A program  
26 that includes all of the following:

27 (1) The contribution into a disability savings account  
28 by an account holder or on behalf of the account holder by  
29 the account holder's employer, parent or guardian, provided  
30 that the total annual contribution does not exceed the

1 maximum amount permitted to be given under the provisions of  
2 section 2503 of the Internal Revenue Code of 1986 (Public Law  
3 99-514, 26 U.S.C. § 2503).

4 (2) An account administrator to administer the  
5 disability savings account from which payment of claims is  
6 made, provided that not more than 30 days after the account  
7 administrator begins to administer the account, the account  
8 administrator notifies in writing each account holder on  
9 whose behalf the administrator administers the account of the  
10 date of the last business day of the administrator's business  
11 year.

12 "Qualified disability expenses." Expenditures made from an  
13 account for the benefit of the account holder and used for goods  
14 and services which assist the account holder to attain or  
15 maintain independence or to obtain educational opportunities,  
16 job training, employment, housing or to otherwise ameliorate the  
17 impact of disabilities on the account holder's independence and  
18 to support the account holder in the activities of daily life.

19 Such expenses shall include, but not be limited to:

20 (1) All expenses permitted to be paid for by trusts  
21 created under the authority of section 1917 of the Social  
22 Security Act (49 Stat. 620, 42 U.S.C. § 1396p).

23 (2) Assistive technology.

24 (3) Employment training and other educational  
25 activities.

26 (4) Fees and expenses directly related to the operation  
27 of the account but only as established in a written agreement  
28 between the account holder and the account administrator.

29 Section 3. Nature of program.

30 (a) General rule.--The provisions of this act shall apply to

1 taxpayers who meet the requirements to be an account holder  
2 under the provisions of this act.

3 (b) Scope.--

4 (1) For taxable years beginning after December 31, 2010,  
5 a resident of this Commonwealth shall be allowed to deposit  
6 contributions into a disability savings account. The amount  
7 of deposit for calendar year 2011 and subsequent years shall  
8 not exceed the maximum amount permitted to be given under the  
9 provisions of section 2503 of the Internal Revenue Code of  
10 1986 (Public Law 99-514, 26 U.S.C. § 2503).

11 (2) For tax years beginning after December 31, 2010, an  
12 employer may offer a disability savings account program to  
13 the employer's employees.

14 (c) Duty to inform employees.--An employer that offers a  
15 disability savings account program shall inform all employees in  
16 writing of the availability of the disability savings account  
17 program and the Federal and State tax status of contributions  
18 made pursuant to this act before making contributions. An  
19 employee eligible to become an account holder may designate  
20 another person to receive such information on his behalf.

21 (d) State income tax exclusion.--

22 (1) Any increase in the value of a disability savings  
23 account and any payment or distribution from a disability  
24 savings account that is used exclusively to pay qualified  
25 disability expenses shall be excluded from taxation under  
26 Article III of the act of March 4, 1971 (P.L.6, No.2), known  
27 as the Tax Reform Code of 1971.

28 (2) A payment or distribution from a disability savings  
29 account that is used for any purpose other than to pay  
30 qualified disability expenses shall be included in income

1 under Article III of the Tax Reform Code of 1971 to the  
2 extent that the amounts paid or distributed were not  
3 previously included in income. The cost recovery method shall  
4 be used to determine the portion of the payment or  
5 distribution to be included in income.

6 (e) Other exclusions.--Amounts deposited into accounts,  
7 earnings on accounts and amounts withdrawn from accounts which  
8 are used for qualified disability expenses of the account holder  
9 shall not be considered available assets or income for the  
10 purpose of assessing liability for care and maintenance of the  
11 account holder and shall not be expended for care and  
12 maintenance, as such terms are used in the act of October 20,  
13 1966 (3rd Sp.Sess., P.L.96, No.6), known as the Mental Health  
14 and Mental Retardation Act of 1966, and in the act of June 13,  
15 1967 (P.L.31, No.21), known as the Public Welfare Code.  
16 Section 4. Distribution of account funds.

17 (a) Authorized purposes.--The account administrator shall  
18 utilize funds held in a disability savings account solely to pay  
19 the qualified disability expenses of the account holder.

20 (b) Submission of documentation.--The account holder may  
21 submit documentation of qualified disability expenses paid by  
22 the account holder during the tax year to the account  
23 administrator. The account administrator shall reimburse the  
24 account holder from the account holder's account for qualified  
25 disability expenses.

26 (c) Limitation.--Funds held in a disability savings account  
27 may not be used to cover expenses of the account holder that are  
28 otherwise covered by a health plan or a trust established under  
29 section 1917 of the Social Security Act (49 Stat. 620, 42 U.S.C.  
30 § 1396p).

1 (d) Advances permissible.--If an employer makes  
2 contributions to a disability savings account program on a  
3 periodic installment basis, the employer may advance to an  
4 employee, interest free, an amount necessary to cover qualified  
5 disability expenses incurred that exceed the amount in the  
6 employee's disability savings account when the expense is  
7 incurred, if the employee agrees to repay the advance from  
8 future installments or when the individual ceases to be an  
9 employee of the employer.

10 Section 5. Account withdrawals.

11 (a) General rule.--Notwithstanding subsections (c), (d), (e)  
12 and (f), an account holder may withdraw money from the account  
13 holder's disability savings account for any purpose other than a  
14 purpose described in section 4(a). Money withdrawn pursuant to  
15 this subsection is income for the purposes of the act of March  
16 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

17 (b) Effect of withdrawal.--Subject to subsection (c), if an  
18 account holder withdraws money for any purpose other than a  
19 purpose described in section 4(a) at any other time, all of the  
20 following apply:

21 (1) The amount of the withdrawal is income for the  
22 purposes of the Tax Reform Code of 1971 in the tax year of  
23 the withdrawal.

24 (2) Interest earned on the amount withdrawn from the  
25 account during the tax year in which a withdrawal under this  
26 subsection is made is income for purposes of the Tax Reform  
27 Code of 1971.

28 (3) The amount of the withdrawal may not be excluded as  
29 provided in section 3(e).

30 (c) Bankruptcy.--The amount of disbursement of any assets of

1 a disability savings account pursuant to a filing for protection  
2 under Federal bankruptcy law by an account holder shall not be  
3 construed as a withdrawal for purposes of this section. The  
4 amount of such disbursement shall not be subject to taxation  
5 under the Tax Reform Code of 1971, and subsection (b) shall not  
6 apply.

7 (d) Marital dissolution.--An account holder's interest in a  
8 disability savings account is not an asset which may be  
9 transferred to an account holder's spouse or former spouse under  
10 a divorce or separation instrument.

11 (e) Death of an account holder.--Upon the death of the  
12 account holder, the account administrator shall distribute the  
13 principal and accumulated interest of the disability savings  
14 account to the estate of the deceased account holder.

15 (f) Transfers and postemployment account maintenance.--

16 (1) An account holder may elect to transfer an account  
17 from an incumbent account administrator to a successor  
18 account administrator, which may be an administrator of a  
19 disability savings account program in which the employer of  
20 the account holder participates.

21 (i) The account holder shall provide not less than  
22 30 days' written notice to the incumbent account  
23 administrator of the account holder's intention to effect  
24 a transfer of the account, which notice shall include the  
25 address of such successor account administrator.

26 (ii) Not more than 30 days after receipt of the  
27 notice referred to in subparagraph (i), the incumbent  
28 account administrator shall mail a check to the successor  
29 account administrator specified by the account holder.

30 (2) If an employee is no longer employed by an employer



1 that participates in a disability savings account program and  
2 the employee, not more than 60 days after the individual's  
3 final day of employment, requests in writing to the former  
4 employer's account administrator that the account remain with  
5 that administrator and that account administrator agrees to  
6 retain the account, the money in the disability savings  
7 account may be utilized for the benefit of the employee and  
8 subject to this act and remain exempt from taxation to the  
9 extent provided in and pursuant to this act.

10 (i) Not more than 30 days after the expiration of  
11 the 60-day period, if the account administrator does not  
12 elect to retain the former employee's account or if the  
13 account holder does not elect to transfer such account as  
14 provided in subparagraph (iii) or (iv), the employer  
15 shall mail a check to the former employee at the  
16 employee's last known address equal to the amount in the  
17 account on that day, and that amount is subject to  
18 taxation.

19 (ii) If an account holder becomes employed with a  
20 different employer that participates in a disability  
21 savings account program, the account holder may transfer  
22 a disability savings account to that new employer's  
23 account administrator.

24 (iii) If an account holder does not transfer a  
25 disability savings account to a new employer's account  
26 administrator pursuant to subparagraph (ii), the account  
27 holder may transfer the account to an account  
28 administrator of the account holder's choice.

29 (iv) If the account holder notifies the prior  
30 employer of the account holder's election to transfer the

1           account pursuant to the provisions of subparagraph (iii)  
2           or (iv), the prior account administrator shall mail a  
3           check to the successor account administrator at the  
4           address of such successor account administrator.

5 Section 6. Other actions.

6           The Secretary of Public Welfare shall promulgate regulations,  
7           apply for waivers or seek other approvals from one or more  
8           Federal agencies as may be necessary to effectuate the  
9           provisions of this act.

10 Section 7. Effective date.

11           This act shall take effect in 60 days.